

Disciplinary policy

Disciplinary policy	
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Applicable to: Wairarapa, Hutt and Capital and Coast DHBs	Contact person: Human Resources Manager
Lead DHB: CCDHB	

Purpose

The purpose of this policy is to ensure:

- Employees are aware of the consequences of breaching the Code of Conduct.
- Disciplinary processes meet procedural fairness and natural justice principles.
- There is a consistent approach to disciplinary matters.

Scope

This Policy applies to:

- the Wairarapa, Hutt Valley and Capital and Coast DHBs (individually a **DHB**, together, the **DHBs**);
- all employees of the DHBs; and
- Those volunteers, contractors, individuals covered by special staff status, and others where a DHB has advised them this Policy will apply, such as Lead Maternity Carers.

For ease of reference, this Policy refers only to employees but applies equally to the other people referred to.

Roles and responsibilities

The DHBs will conduct disciplinary processes fairly, reasonably and in good faith.

Managers conducting disciplinary processes will:

- Act honestly, openly and without hidden or ulterior motives;
- Raise and respond to issues or concerns in a fair and timely way;
- Be constructive and cooperative;

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- Be proactive in providing relevant information and consider all relevant information provided;
- Keep an open mind, listen and be prepared to revisit their views about a particular situation or behaviour;
- Treat employees, unions and employee representatives respectfully;
- Provide access to an external confidential Employee Assistance Programme (EAP) for employees;
- Ensure employees are aware of expectations, responsibilities and the policies and procedures that apply to them;
- Seek advice from Human Resources where appropriate;
- Be aware of, identify and take appropriate steps to deal with issues around behaviour and the conduct of employees in the workplace;
- Respond promptly, sensitively and discreetly to situations where inappropriate behaviour is exhibited or alleged to have occurred; and
- Ensure that any complaint brought to them by an employee is followed through (even where it is referred to and dealt with by others).

All employees are expected to:

- Adhere to the expected standards of conduct as per the Code of Conduct;
- Take responsibility and be accountable for their behaviour and actions;
- Raise issues or concerns in a timely, sensitive and discreet way;
- Treat others respectfully and with dignity;
- Participate in appropriate training;
- Work with the DHB in good faith throughout any disciplinary processes, and respond to matters in a timely way given the right to seek appropriate advice and representation;
- Cooperate with any disciplinary investigation; and
- Seek appropriate support, guidance and representation as required. .

Human Resources will:

- Ensure that managers are provided with timely advice and guidance to manage potentially unacceptable behaviour and conduct;

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- Provide appropriate advice, support and training to managers;
- Advise employees on DHB processes and avenues for support; and
- Ensure there is consistency in the application of related processes and procedures across the DHBs.

Good faith Employers, employees and unions or employee representatives must at all times deal with each other in 'good faith'. This is a legal requirement and a guiding principle for the application of this policy. Good faith obligations are mutual and mean that the DHBs and their employees and unions or employee representatives must (among other things):

- engage openly, honestly and respectfully;
- be responsive and communicative;
- be active and constructive in maintaining a productive employment relationship; and
- be committed to patient safety and developing, maintaining and providing high quality public health services.

Policy statements

The DHBs are committed to ensuring:

- disciplinary processes are implemented and conducted in accordance with this Policy;
- disciplinary outcomes are fair and reasonable; and
- disciplinary processes and outcomes are documented and available to the employee concerned.

Employees who are the subject of a disciplinary process can expect to:

- fully understand the allegations made against them, which will ordinarily include the right to see source documents, such as a complaint;
- be given a genuine opportunity to respond to allegations and to explain their actions;
- have the right to representation and support of their own choosing;
- have any issues they raise addressed promptly and appropriately in the circumstances;
- see all relevant documentation and evidence relating to the investigation, unless exceptional circumstances exist;
- have their views and any mitigating factors they advance genuinely considered;
- have the opportunity to comment on a proposed disciplinary outcome before a final decision is made.

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Other employees who are involved in the process can expect to:

- have the right to representation and support;
- have any issues they raise addressed promptly and appropriately in the circumstances; and
- be given information about the process and outcomes as appropriate.

Human Resources

Managers are required to seek advice from Human Resources as early as possible and throughout a disciplinary process. This is both to provide assistance and to ensure the DHB takes a consistent approach to disciplinary matters.

Key considerations

Employment agreements

It is important to always consider whether the applicable employment agreement deals with disciplinary matters. In most cases it won't, but if it does, the DHB is obliged to comply with any specific obligations in the employment agreement.

For example, the Senior Medical and Dental Officers collective agreement deals with investigations into an SMO's clinical practice. If the disciplinary concerns involve an investigation into an SMO's clinical practice, the DHB must comply with the collective agreement in relation to the clinical practice investigation (this involves, among other things, consulting with the SMO on the terms of reference for any clinical practice investigation).

Professional practice concerns

Where the disciplinary matter relates to professional practice, the manager must involve the appropriate Professional Adviser, such as the Chief Nursing Officer, Executive Director of Allied Health or Chief Medical Officer, throughout the disciplinary process. The Professional Adviser will ensure professional compliance and ensure the matter is reported to the relevant professional body if necessary. Also note the requirements of the Senior Medical and Dental Officers collective agreement for investigations into an SMO's clinical practice (as noted above).

Employee representation

Employees are entitled to have a representative, support person, or member of their whanau present. Employees should be given adequate notice of a formal meeting in order to arrange representation or support.

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Sometimes the employee's first choice of representative or support person is not available. The DHBs will allow flexibility in this instance, such as proposing an alternative meeting time. It is important however that the disciplinary process is not unreasonably delayed

Employee Assistance Programme

Employees will be advised of their ability to access the DHBs' Employee Assistance Programme provider (**EAP**) at any stage.

Police involvement

The DHBs will involve the Police where there is a clear indication that criminal activity may have occurred.

If the DHB does involve the Police, the employee will be informed before the Police are notified unless:

- it is not reasonably practicable to do so the type of conduct means the Police should be involved immediately; or
- there is a risk that notifying the employee may lead to the destruction of evidence or otherwise prejudice the Police's investigation.

Code of Conduct

The Code of Conduct outlines the DHBs' expectations in terms of standards of conduct and behaviour, and includes examples of conduct that are not considered acceptable, may be considered misconduct or serious misconduct, and could give rise to disciplinary action.

Standards for satisfactory and acceptable conduct may be outlined in other documents including:

- Employment Agreements.
- DHB policies and procedures.
- Professional codes of practice or ethics.
- Legislation – for example the Health and Safety in Employment Act 1992, Privacy Act 1993, Human Rights Act 1993, Employment Relations Act 2000, Health Practitioners Competence Assurance Act 2003.
- The employee's Role/Position Description Formal Performance Improvement Plan (PIP) and performance review forms.

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Employees are expected to be aware of the standards of performance and conduct expected of them and will be provided with a copy of the Code of Conduct and given access to relevant policies, procedures and guidelines.

The seriousness and consequences of any performance or misconduct issue will depend on the circumstances.

In deciding whether conduct is a performance issue, misconduct or serious misconduct, and when considering the appropriate outcome to any disciplinary process, the following factors should be considered:

- the nature of the conduct;
- the circumstances in which it occurred;
- the position, duties and responsibilities of the employee;
- the consequences the employee's conduct may have on the employee's ability to fulfil their duties and responsibilities;
- the consequences or potential consequences of the conduct, including those on working relationships with colleagues, patients, and the wider community;
- the effects of the behaviour on the DHB's trust and confidence in the employee;
- how similar behaviour has been addressed by the DHB; and
- any other factors relevant to the particular situation.

Misconduct

Misconduct is unacceptable conduct that does not meet the DHBs' expectations as set out in the Code of Conduct or another relevant document, policy or procedure. Examples of misconduct are listed in the Code of Conduct and could, depending on the seriousness of the particular conduct, be considered serious misconduct.

Generally speaking, misconduct will justify disciplinary action. More specifically, a finding of misconduct will often result in a warning. A warning puts the employee on notice that any further acts of misconduct, while the warning is current, may result in further disciplinary action (such as a further warnings or dismissal or demotion as appropriate in the circumstances).

Serious Misconduct

Serious misconduct is unacceptable conduct that seriously breaches the DHBs' expectations as set out in the Code of Conduct or any other relevant document, policy or procedure. Examples of serious misconduct are listed in the Code of Conduct.

Serious misconduct may result in a number of outcomes including summary dismissal (i.e. dismissal without notice). Where there are mitigating circumstances, a written warning, a

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final written warning, dismissal on notice, demotion, redeployment or another action may be considered appropriate.

Suspension

Suspension is in itself a serious step. The DHB delegations will provide information on who is authorised to suspend an employee.

Suspension may be appropriate where (this list is not exhaustive):

- Patients are at risk.
- The employee or others are at risk.
- The situation is highly emotive or there is considerable friction in the workplace.
- The allegation is criminal in nature.
- The DHB or the DHB's property is at risk.
- There is a risk of interference with an investigation.
- The conduct alleged is very serious such that the trust the DHB has in the employee is put seriously in doubt.

Examples of circumstances where suspension may be appropriate include (this list is not exhaustive):

- serious allegations about how the employee has dealt with patients;
- where fraud or misuse of the DHB's IT systems or equipment is alleged;
- where serious allegations of bullying, racial or sexual harassment have been made; or
- where the DHB has concerns that the employee is under the influence of drugs or alcohol, or is incapable of safe or effective work.

The employee will be given the opportunity to respond to a proposal to suspend (which may include restrictions for example IT access etc.) and to provide their view on whether suspension is warranted, the proposed duration and to give any mitigating factors the employee thinks should be considered.

Reasonable alternatives to suspension will be explored prior to a decision being made. Suspension will only be for as long as is appropriate in the circumstances.

If an employee is given verbal notice of suspension, this will be followed up in writing (with the reasons for the suspension and the duration of it clearly set out).

In some situations, the employee will not be given advance notice of the meeting or an opportunity to seek representation prior to being suspended. In this situation, the employee will still be given an opportunity to comment on the proposed suspension and will

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be invited to provide further comments later, once the employee has had an opportunity to consider the matter and take advice.

Disciplinary process

Core principles

There is no 'one size fits all' approach to disciplinary process, although the core principles for any disciplinary process are:

- The DHB will raise its concerns with the employee and provide the employee with information relevant to the process.
- The DHB will investigate what is alleged to have happened, and decide if disciplinary action is appropriate.
- The employee will have a reasonable opportunity to respond to the allegations and any proposed disciplinary action.
- The DHB will genuinely consider the employee's explanation before making any final decisions.
- The employee is entitled to support, advice and representation throughout.

In each case, managers, with support from Human Resources, need to consider the circumstances carefully, and decide what steps are appropriate. Managers will need to be flexible and make adjustments to the process should circumstances change or new information come to light.

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Investigation

When faced with a potential disciplinary issue, managers will need to decide whether and what investigation is required before deciding what to do next. In some cases, for example where serious concerns are raised, a formal investigation (perhaps involving an external investigator if specialist expertise is required) may be necessary before a decision can be made about the need for a disciplinary process.

Alternatively, in situations where the allegations lack detail or can be verified in some way (e.g. through a quick email search), some background research might be undertaken before any allegations are made. In other circumstances, for example where the employee has admitted the conduct or where it otherwise appears on the face of the information received that the conduct has occurred, it may be that no further investigation is needed before raising the manager's concerns in a disciplinary way.

Complaints

Allegations of misconduct or serious misconduct will sometimes be brought to the manager's attention by way of a complaint. Complainants will be given reasonable feedback about the investigation process and whether their complaint is ultimately upheld.

Disciplinary outcomes

Any disciplinary outcome will be:

Non punitive	The primary emphasis is on changing behaviour and upholding standards not punishment or revenge
Consistent	Disciplinary outcomes should be consistent across similar situations
Proportional	Disciplinary outcomes will be in proportion to the disciplinary issue, taking into account the circumstances and any extenuating factors

Depending on the particular circumstances the following outcomes are possible:

- No action.
- Letter clarifying expectations.
- Performance Improvement Plan (PIP) as per the Managing Employee Performance Policy and Policy Guideline.
- Warning.
- Final Warning.
- Demotion (offered as an alternative to dismissal).

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- Dismissal with notice.
- Summary dismissal (without notice).
- A combination of some of the above.

Managers should always consider whether some other action should be taken instead of or in addition to a disciplinary outcome. For instance, a demotion and final warning may be a good alternative to dismissal, and a warning might be supported by supervision.

Related documents

- Code of Conduct
- Delegations of Authority Policy
- Employment Agreements
- Practising Certificates Policy
- Employee Assistance Policy
- Managing and Preventing Workplace Bullying, Harassment, Victimisation and Discrimination Policy
- Medicines Management Policy
- Managing Employee Performance Policy
- Conflict of Interest Policy
- Intellectual Property Policy
- Fraud Policy
- Employment Relations Act 2000
- Health and Safety at Work Act 2015
- Privacy Act 1993
- Human Rights Act 1993
- Health Practitioners Competence Assurance Act 2005

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